HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G. ROHINI

Writ Appeal No. 900 of 2007

Between:

K. Vajram

… Appellant

And

Labour Court-III,
Rep., by its Presiding Officer,
Hyderabad & another

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri A.K. Jayaprakash Rao

Counsel for respondent No.2 : Shri K. Madhava Reddy

26th October, 2007

Per G.S. Singhvi, CJ

Whether reinstatement with full back wages must follow as a consequence of the declaration of invalidity granted by the adjudicating bodies constituted under the Industrial Disputes Act, 1947 (for short, 'the Act') qua the termination of the service of an employee who falls with the definition of workman under Section 2 (s) of the Act, is the question which arises for determination in this appeal filed by Shri K. Vajram against order dated 22-8-2007 passed by the learned Single Judge in Writ Petition No. 34416 of 1997, whereby he declined to interfere with award dated 11-12-1995 rendered by Presiding Officer, Labour Court-III, Hyderabad (hereinafter referred to as 'the Labour Court') in I.D No. 578 of 1992.

The Facts:

The appellant was temporarily appointed as Conductor in the

services of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') on 4-4-1986. His services were terminated on 9-5-1986 by Depot Manager, Tandur Depot of the Corporation (respondent No.2 herein) by invoking condition 3 of the appointment order, because he was found to have indulged in cash and ticket irregularities. The appeal preferred against that order was dismissed by the appellate authority. After three years, the appellant submitted application dated 27-6-1989 for fresh appointment as Conductor without disclosing the facts relating to his previous engagement and termination of service. He was selected by the competent authority and was appointed by Divisional Manager, Ranga Reddy Division vide his order dated
31-10-1989. In March, 1990, a departmental enquiry was initiated against him on the charge of having secured employment by concealing the fact that he was involved in cash and ticket irregularities and was removed from service with effect from 9-5-1986. During the course of enquiry, the appellant made a statement on 18-7-1990 and admitted that he had concealed the facts relating to his previous employment. The relevant portion of his statement is extracted below:

> "I have concealed the fact of my previous employment in TDR depot in the year 1986 and also my removal from TDR depot on 9.5.86 due to my involvement in C & T irregularities, at the time of applying for the post of conductor in RR district for the second time in the year 1989 in order to get job of conductor in corporation because if authorities know about my earlier work and removal there were no chances of getting employment again in corporation".

The enquiry officer submitted report with the finding that the charge levelled against the delinquent has been proved. Respondent No. 2 accepted the enquiry report and passed order dated 15-3-1991, whereby he imposed the penalty of removal from service on the appellant. The appeal and review preferred by the appellant were dismissed by Divisional and Regional Managers respectively vide

orders dated 10-9-1991 and 18-12-1991. He then raised an industrial dispute by filing an application under Section 2-A (2) of the Act. He pleaded that the charge levelled against him vide memo dated 28-3-1990 was untenable, because the advertisement issued in 1989 did not require the candidates to furnish information about their previous employment or termination of service. He further pleaded that the finding of guilty recorded by the enquiry officer is based on no evidence and respondent No.2 illegally terminated his services.

In the counter filed on behalf of respondent No.2, it was averred that the appellant's services were terminated on 9-5-1986, because he committed cash and ticket irregularities; that the appeal preferred by him was dismissed; that he succeeded in getting fresh employment by concealing the facts relating to his involvement in cash and ticket irregularities and consequential termination of service and on being found guilty of concealment of facts relating to termination of his previous service, he was removed from service.

The learned Presiding Officer of the Labour decided the issue relating to validity of enquiry in favour of the employer. He then considered whether the appellant was guilty of securing employment by concealing the facts and observed:

> "In this case the petitioner was not dismissed from service. He was appointed on 4.4.86 as per Ex.M4 order. His services were terminated as per Ex.M.5 so Ex.M.5 order does not speak about his dismissal from service. Hence there is no bar him to apply for the post of conductor as it is no bar him to apply for the port of conductor as it is a termination. Hence, even if the fact that he was employed on 4.4.86 and his services were terminated on 9.5.86 are mentioned in the application the respondent would not have denied appointment as the termination order does not disclose that his service were terminated due to cash and ticket irregularities committed by the petitioner on 4.4.86. It also does not disclose that the departmental enquiry was conducted. Even in the decision of A.P. High Court in W.P.No.17825/86 (N.Sataiah Vs.D.M.Medak and D.M. Zaheerabad) referred by the respondent in the counter. It is has removal from service itself is not a bar for selections. But it will certainly weight at the time of his selections. If he had brought to the notice of the

selection committee about his removal or punishment the possibility of not selecting him cannot be ruled out. It would not show that he was removed from service for any cash and ticket irregularities on 4-5-86."

The learned Presiding Officer rejected the arguments of the counsel appearing on behalf of respondent No.2 that the admission made by the appellant before the enquiry officer was sufficient for holding him guilty. This is evinced from the following extracts of the award:

"The contention of the Advocate for the respondent is that an application for the appointment should be made in Forum-A and that Form-A contains a column in which the applicant should furnish his antecedents and previous experience if any in the A.P.S.R.T.C. Form – A is not filed by the Respondent. If a candidate has to apply for the Appointment in Form-A the respondent should have rejected his application Ex.M-6. In this case Ex.M.6 was not rejected. Form-A is also not available. Hence, it cannot be said that intentionally the petitioner concealed the fact of his removal. When he applied for 2nd time under Ex.M.6. The removal of the petitioner by an order dt.9.5.86, it not after any enquiry for cash and ticket irregularities. The domestic enquiry No domestic enquiry was conducted. There is no record that domestic enquiry was conducted. The contention of the advocate for the respondent that the petitioner himself stated before the enquiry officer (chief Inspector) that due to irregularities he was removed from service on 9.5.86, that his appeal was also rejected and that he concealed the fact of previous employment and removal at the time of applying for the post of conductor in R.R.Division for 2nd time in 1989 in order to get job as conductor in A.P.S.R.T.C. because if authorities know about his earlier appointment and removal there were no chances of getting employment in corporation, and hence, there is an admission on the part of the petitioner that he intentionally concealed the fact of his appointment and removal for the cash and ticket irregularities. Even if the concealment of earlier appointment and removal is only to get fresh employment, as per the record filed by the respondent the concealment. If any is about appointment as per Ex.M.4 and termination as per Ex.M5. Except the alleged the statement of the petitioner recorded before the enquiry officer the record maintained by the respondent did not reveal that he was terminated for cash and ticket irregularities. On the other hand Ex.M.5 shows it is simple

termination. As it is not a dismissal, there is no bar for applying for fresh appointment. It is not the case of the respondent that when he was asked at the time of interview (if any) or at the time of his joining as to his previous service in A.P.S.R.T.C, and he concealed his previous employment and removal. The concealment of fact would arise when the petitioner required to furnish certain facts. There was no occasion for the petitioner to any about his previous appointment and termination. Hence it cannot be said that the employment secured is by concealment of the fact of having been removed from service from Tandur Depot. And it does not amount to suppressing the fact that he worked a conductor at Tandur depot. Hence, I held charge No.1 and 2 are not established. Hence, order of removal passed by the respondent is set-aside. On the principle of No work No pay backwages are denied by reinstating the petitioner."

The appellant challenged the award of the Labour Court to the extent of denial of back wages in Writ Petition No. 34416 of 1997. He pleaded that in view of the finding recorded by the learned Presiding Officer of the Labour Court that the allegation levelled against the appellant has not been proved, there was no justification to deny him back wages. The appellant further pleaded that the award of back wages must follow as a logical consequence of the invalidation of the employer's action.

The learned Single Judge took cognizance of the admission made by the appellant before the Enquiry Officer, referred to the judgment of the Supreme Court in **U.P State Brassware Corporation Limited and another vs. Uday Narain Pandey**[1] and held that the Labour Court did not commit any illegality by not granting back wages.

Shri A.K. Jayaprakash Rao, learned counsel for the appellant relied on order dated 26-6-2003 passed by the learned Single Judge in Writ Petition No. 31938 of 1998, **P. Jayaram Reddy vs. Labour Court-II, Hyderabad** and judgment of the Division Bench in Writ Appeal No. 2013 of 2004, **the Depot Manager, APSRTC vs. P. Jayaram Reddy** and argued that the Presiding Officer of the Labour Court and the learned Single Judge committed serious error by declining relief of back wages to his client. Learned counsel further

argued that in the face of finding recorded by him on the legality of the action taken by respondent No.2, it was not open to the learned Presiding Officer to deny back wages to the appellant who had been wronged by the employer.

Learned counsel for respondent No.2 supported the order under challenge and argued that the award of back wages is not automatic. He further argued that even though the learned Presiding Officer of the Labour Court did not assign detailed reasons for declining the relief of back wages to the appellant, the learned Single Judge did not commit any error by refusing to interfere with the award, because the appellant had unequivocally admitted that he had concealed the facts relating to his previous engagement and termination of service. Learned counsel submitted that the appellant was shown the door on 9-5-1986 because he had indulged in cash and ticket irregularities and this factor was sufficient to deny him the relief of back wages.

We have considered the respective arguments and carefully scrutinised the record. The rule that a declaration of invalidity of the termination of the service of the workman should necessarily follow an order of reinstatement with full financial benefits was applied by the Courts till mid-1990's. In **Hindustan Tin Works v. Employees**, the Supreme Court considered the issue relating to payment of back wages and held as under:

> " 1) Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.
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> 2) In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant

considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

3) If the normal rule in a case like this is to award full back wages, the burden will be on the appellant-employer to establish circumstances which would permit a departure from the normal rule. If the employer pleads financial incapacity and expects the workmen to sacrifice a part of the back wages due to them, there must be a corresponding reduction by the management in its emoluments and expenses."

In **Gujarat Steel Tubes Ltd. v. Mazdoor Sabha** (supra), the majority of the three Judges Bench of the Supreme Court referred to the precedent in **Hindustan Tin Works v. Employees** (supra) and observed:

> "Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Article 43-A cannot be missed, as explained in **Hindustan Tin Works**. Labour is no more a mere factor in production but a partner in industry, conceptually speaking, and less than full back wages is a sacrifice by those who cannot best afford and cannot be demanded by those, who least sacrifice their large "wages" though can best afford, if financial constraint is the ground urged by the latter (Management) as inability to pay full back pay to the former. The morality of law and the constitutional mutation implied in Article 43-A bring about a new equation in industrial relations. Anyway, in **Hindustan Tin Works case**, 75 per cent of the past wages was directed to be paid. Travelling over the same ground by going through every precedent is supererogatory and we hold the rule is simple that the discretion to deny reinstatement or pare down the quantum of back wages is absent save for exceptional reasons."

However, in the last one decade the legal position has undergone substantial change. Off late, the Supreme Court has consistently held that the relief of back wages and other ancillary benefits cannot be claimed by the workman as of right and the adjudicating bodies constituted under the Act have ample discretion to mould the relief in the cases of unlawful and/or unjust termination of service. In every such case, the Labour Court/Industrial Tribunal has to keep in view the gravity of the misconduct found proved against the workman, his past record and then decide whether an order of reinstatement which is preceded by a declaration of invalidity qua the action taken by the employer should be accompanied by an order for grant of other benefits including back wages. This position is clearly discernible from the judgments of the Supreme Court in **Allahabad Jal Sansthan v. Daya Shankar Rai**[2], **GM, Haryana Roadways v. Rudhan Singh**[3], **M.L. Binjolkar v. State of M.P.**[4], **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[5], **U.P.SRTC Ltd. v. Sarada Prasad Misra**[6], **Municipal Council, Sujanpur v. Surinder Kumar**[7] and **J.K. Synthetics Ltd. v. K.P.Agrawal**[8].

In **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey** (supra), the Supreme Court referred to large number of judicial precedents on the subject and held:

> "Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. The changes brought about by the subsequent decisions of this Court,

probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence."

In **J.K. Synthetics Ltd. v. K.P.Agrawal** (supra), the Supreme Court held:

"The manner in which "back wages" is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. There has also been a noticeable shift in placing the burden of proof in regard to back wages. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed."

If the present case is examined in the light of the propositions laid down in the latter judgments, it is not possible to find any fault with the view expressed by the learned Single Judge that the appellant is not entitled to any back wages. In our considered view, the admission made by the appellant that he had concealed the facts relating to his previous engagement and termination of service, else he may not have been selected in the year 1989 is indicative of guilty

mind. This could legitimately weigh with the learned Single Judge for refusing to exercise power of this Court under Article 226 of the Constitution of India and we do not see any valid reason to take a different view.

It is also apposite to mention that the appellant had not produced any evidence before the Labour Court that after the termination of his service in 1991, he was not gainfully engaged or that he was sustaining interest by taking loan or financial assistance from other sources. Therefore, despite the lack of reasons, we are not inclined to interfere with the discretion exercised by the Labour Court not to award back wages to him.

The order passed by the learned Single Judge in P. Jayaram Reddy's case (supra), which was confirmed by the Division Bench turned on its own facts. The same cannot be treated as laying down a general proposition that in each and every case the Labour Court is duty bound to award back wages to the workman, the termination of whose service is found to be illegal.

No other point has been argued.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

G. ROHINI, J

October 26, 2007
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[1] (2006) 1 SCC 479
[2] AIR 2005 SC 2371

[3] (2005) 5 SCC 591
[4] (2005) 6 SCC 224
[5] (2006) 1 SCC 479
[6] (2006) 4 SCC 733
[7] (2006) 5 SCC 172
[8] (2007) 2 SCC 433